

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Education Professional Standards Board**  
**(Amendment)**

**16 KAR 4:020. Certification requirements for teachers of exceptional children.**

RELATES TO: KRS 157.200, 157.250, 161.020, 161.028(1), 161.030, ~~[161.100,]~~ 20 U.S.C. 1412, 34 C.F.R. 300.156 ~~[1221(e), 1400-1419]~~

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.028 require the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate for all ~~public-school~~~~[public school]~~ positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel. (1) In accordance with Chapter 2 of Title XVI of the Kentucky Administrative Regulations, the EPSB shall issue certificates for teaching exceptional children with one or more of the disabilities defined in 34 C.F.R. 300.8 and 707 KAR 1:002.

(2) A teacher holding the following certification shall be assigned to serve students with moderate and severe disabilities at any grade level: Certification for Teaching Exceptional Children – Moderate and Severe Disabilities, Grades Primary Through 12.

(3) A teacher holding the following certification shall be assigned to serve students with learning and behavior disorders:

(a) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades 8 Through 12; or

(b) Certification for Teaching Exceptional Children – Learning and Behavior Disorders, Grades Primary Through 12

(4) A teacher holding the following certification shall be assigned to serve students with visual impairments at any grade level: Certification for Teaching Exceptional Children – Visually Impaired, Grades Primary Through 12.

(5) A teacher holding the following certification shall be assigned to serve students with hearing impairments at any grade level:

(a) Certification for Teaching Exceptional Children – Hearing Impaired, Grades Primary Through 12; or

(b) Certification for Teaching Exceptional Children – Hearing Impaired with Sign Proficiency, Grades Primary Through 12

(6) A teacher holding the following certification shall be assigned to serve students with speech and language and communications disorders: Certification for Teaching Exceptional Children – Communication Disorders, Grades Primary Through 12.

(7) A teacher holding the following certification shall be assigned to serve students with orientation and mobility disabilities: Certification for Teaching Exceptional Children – Orientation and Mobility Specialist.~~[Mild mental disability (MMD). A teacher holding the following certification shall be assigned to serve pupils with mild mental disabilities at any grade level:~~

~~(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or~~

~~(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).~~

~~(2) Orthopedic impairment (OI).~~

~~(a) A teacher holding the following certification shall be assigned to serve pupils with orthopedic impairments at any grade level:~~

~~1. Certification for orthopedically handicapped or physically handicapped, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or~~

~~2. Certification for teaching exceptional children.~~

~~(b) A teacher possessing one (1) of the certificates identified in paragraph (a)2 of this subsection shall be assigned based on the learning characteristics and services needs of the child.~~

~~(3) Other health impairment (OHI).~~

~~(a) A teacher shall be assigned to serve pupils identified as other health impaired at any grade level based upon the learning characteristics and services needs of the child; and~~

~~(b) A teacher assigned to pupils identified as other health impaired shall possess a certificate for teaching exceptional children.~~

~~(4) Specific learning disability (LD). A teacher holding the following certification shall be assigned to serve pupils with learning disabilities at any grade level:~~

~~(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or~~

~~(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).~~

~~(5) Developmental delay (DD). A teacher holding the following certification shall be assigned to serve pupils with developmental delay at any grade level:~~

~~(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or~~

~~(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).~~

~~(6) Emotional-behavioral disability (EBD).~~

~~(a) A teacher holding the following certification shall be assigned to serve pupils identified as emotional-behavioral disabled at any grade level:~~

~~1. Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12);~~

~~2. Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or~~

~~3. Certification for teaching exceptional children.~~

~~(b) A teacher possessing one (1) of the certificates identified in paragraph (a)6 of this subsection shall be assigned based on the learning characteristics and services needs of the child.~~

~~(7) Functional mental disability (FMD). A teacher holding the following certification shall be assigned to serve pupils with functional mental disabilities at any grade level:~~

~~(a) Certification for trainable mentally handicapped, grades K-12;~~

~~(b) Certification for teaching the trainable mentally retarded, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12);~~

~~(c) Certification for teaching the severely and profoundly handicapped at any grade level; or~~

~~(d) Certification for teaching the moderately and severely disabled, grades P-12.~~

~~(8) Multiple disabilities (MD).~~

~~(a) A teacher shall be assigned to pupils at any grade level who have multiple disabilities consistent with the nature of each of the student's different disabilities and based on the learning characteristics and services needs of the child; and~~

~~(b) A teacher assigned to pupils with multiple disabilities shall possess a certificate for teaching exceptional children.~~

~~(9) Deaf-blindness.~~

~~(a) A teacher shall be assigned to serve pupils identified with deaf-blindness at any grade level based on the learning characteristics and services needs of the child; and~~

~~(b) A teacher assigned to pupils identified with deaf-blindness shall possess a certificate for teaching exceptional children.~~

~~(10) Autism.~~

~~(a) A teacher shall be assigned to serve pupils identified with autism at any grade level based on the learning characteristics and services needs of the child; and~~

~~(b) A teacher assigned to pupils identified with autism shall possess a certificate for teaching exceptional children.~~

~~(11) Traumatic brain injury (TBI).~~

~~(a) A teacher shall be assigned to serve pupils identified as having a traumatic brain injury at any grade level based on the learning characteristics and services needs of the child; and~~

~~(b) A teacher assigned to pupils identified as having a traumatic brain injury shall possess a certificate for teaching exceptional children.~~

~~(12) Hearing impaired (HI). A teacher holding the following certification shall be assigned to serve pupils with hearing impairments at any grade level:~~

~~(a) Certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or~~

~~(b) Certification for teaching the hearing impaired, grades P-12.~~

~~(13) Visually impaired (VI). A teacher holding the following certification shall be assigned to serve pupils with visual impairments at any grade level:~~

~~(a) Certification for teaching the partially seeing, blind, or visually impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or~~

~~(b) Certification for teaching the visually impaired, grades P-12.~~

~~(14) Communication disorders. A teacher holding the following certification shall be assigned to serve pupils who have been identified as needing instruction for speech or language disorders at any grade level:~~

~~(a) Certification for speech and hearing, grades one (1) through twelve (12);~~

~~(b) Certification for speech and communication disorders, grades K-12; or~~

~~(c) Certification for communication disorders, grades P-12.~~

~~Section 2. Certification Requirements for Assignment of Interdisciplinary Early Childhood Education Teachers for the Provision of Special Education Services. (1) A teacher holding the following qualifications shall be assigned to serve birth to primary pupils who have been identified as needing special education services:~~

~~(a) Certification for interdisciplinary early childhood education offered under 16 KAR 2:140 and 16 KAR 2:040;~~

~~(b) Exemption identified in 16 KAR 2:040; or~~

~~(c) Qualifications set forth in 704 KAR 3:410, Section 7(1)(a).~~

~~(2) A special education teacher identified in Section 1 of this administrative regulation shall not be precluded from providing services in the teacher's certification area to birth to primary pupils with disabilities if that certification is valid for the primary ages.~~

~~Section 3. Probationary and Emergency Provisions. (1) If no regularly certified teacher as delineated in Sections 1 and 2 of this administrative regulation is available to provide the special education services, the local district may employ a teacher certified on a probationary status under 16 KAR 2:160.~~

~~(2) If no probationary certified special education teacher is available, the district may employ a teacher certified on an emergency status under the requirements of KRS 161.100 and 16 KAR 2:120.]~~

Section 2.~~[Section 4.]~~ Waiver Requests for Teacher Assignment. (1) Local school districts which need to assign teachers to teach exceptional classes or students~~[pupils]~~, with the exception of students~~[pupils]~~ receiving services for communication disorders, not consistent with the teacher's certification~~[the above criteria]~~ shall request a waiver for the teacher assignment through the Kentucky Department of Education's (KDE) Office of Special Education and Early Learning~~[Education, Office of Special Instructional Services, Division of Exceptional Children]~~ and be approved by the EPSB~~[Education Professional Standards Board]~~.

(2) The EPSB~~[Education Professional Standards Board]~~ and KDE~~[Department of Education]~~ shall give consideration for this approval based on information provided by the local school district in its request. The request shall include:~~]~~

~~(a) Be made prior to September 15 or within fifteen (15) school days of the need for assignment if it occurs after September 15 of the school year for which a waiver is requested; and~~

~~(b) Include:]~~

~~(a)[1.] The teacher's name, school assignment, certificate number, class plan assignment, and current certification;~~

~~(b)[2.] A listing of pupils currently served by category of exceptionality;~~

~~(c)[3.] A listing of pupils the district is requesting to be served by exceptionality; and~~

~~(d)[4.] Any other relevant information which the district wishes to have considered in the decision-making process.~~

(3) Following consideration by the KDE~~[Department of Education]~~ and approval by the EPSB~~[Education Professional Standards Board]~~, the local district shall be promptly notified of the decision on the waiver request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: August 17, 2021

FILED WITH LRC: August 24, 2021 at 3:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 29, 2021, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification requirements for teachers of exceptional children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for teachers of exceptional children and the procedures for requesting a waiver for the teacher assignments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public-school position for which a certificate is issued. KRS 161.028 requires the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. This administrative regulation establishes the certification requirements for teachers of exceptional children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for the assignment of special education personnel and sets the procedures for requesting a waiver for the teacher assignments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment removes references to special education certificates that are no longer issued and updates the assignment of special education personnel to align with current special education certificates. The amendment removes portions of the regulation that are now contained in other regulations and updates the procedures for requesting a waiver of the assignment of teachers of exceptional students to align with current practices.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the certification requirements for the assignment of special education personnel to align with current special education certificates and to update the procedures for requesting a waiver of the assignment of teachers of exceptional students to align with current practices.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will remove references to certificates that are no longer issued and update the assignment of special education personnel to align with current special education certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 172 Kentucky school districts, 30 educator preparation program providers, and educators seeking this certificate.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts will need to ensure that the assignment of special education personnel aligns with the updated certification requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certification requirements for the assignment of special education personnel will align to current certificates. District will have additional flexibility in when they may request waivers for the assignment of teachers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board, public colleges and universities with educator preparation programs and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program.